

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

| | |
|---|---|
| B & R SUPERMARKET, INC., d/b/a MILAM'S MARKET, a Florida corporation, et al., Individually and on Behalf of All Others Similarly Situated, | X |
| Plaintiff, | : |
| v. | : |
| VISA, INC., a Delaware corporation, et al., | : |
| Defendants. | X |

Plaintiffs B & R Supermarket, Inc. (d/b/a Milam's Market), Grove Liquors LLC, Strouk Group LLC (d/b/a Monsieur Marcel), and Palero Food Corp. and Cagueyes Food Corp. (d/b/a Fine Fare Supermarket) (collectively, "Plaintiffs") and defendants Mastercard International Inc. ("Mastercard"), Discover Financial Services ("Discover"), Visa Inc. and Visa U.S.A. Inc. (together, "Visa"), and American Express Company ("AmEx") (collectively, "Defendants") respectfully submit this joint report in advance of the status conference scheduled for May 8, 2019. The parties agree that there are no issues ripe for discussion with the Court and respectfully request to cancel the May 8 status conference.

I. PENDING MOTIONS

Plaintiffs' Renewed Motion for Class Certification. On January 31, 2019, the Court entered the third amended scheduling order (Dkt. No. 682), pursuant to which Plaintiffs' renewed motion for class certification was reinstated. Defendants' opposition was served March 15, 2019. On April 10, 2019, the parties submitted a joint letter motion requesting amendments to the operative scheduling order to extend the deadline for Plaintiffs' reply in support of their renewed motion for class certification and the briefing on the parties' respective motions to exclude expert

testimony (Dkt. No. 690). On April 11, 2019, the Court granted the parties' motion and entered the fourth amended scheduling order (Dkt. No. 692), pursuant to which Plaintiffs' reply will be served on June 7, 2019.

The Parties' Motions to Exclude Expert Testimony. On March 15, 2019, along with their opposition to Plaintiffs' renewed motion for class certification, Defendants Mastercard, Visa, and Discover served a motion to exclude Plaintiffs' class certification expert ("Defendants' Motion to Exclude"). Pursuant to the operative fourth amended scheduling order, Plaintiffs' opposition to Defendants' Motion to Exclude is due June 7, 2019, and Defendants' reply is due July 12, 2019. Dkt. No. 692. Additionally, any motion by Plaintiffs to exclude Defendants' class certification expert is due June 7, 2019, with Defendants' opposition due July 12, 2019, and Plaintiffs' reply due August 13, 2019. *Id.* Any oral argument on these motions will be heard concurrent with the hearing on Plaintiffs' renewed motion for class certification. *Id.*

Discover's Motion to Compel Arbitration. In light of the Court's denial of Plaintiffs' motion for class certification on March 11, 2018 (Dkt. No. 644), and consistent with Discover's position as set forth in previous Joint Status Reports, it is Discover's position that it is proper to wait until the Court has decided Plaintiffs' renewed motion for class certification before moving to compel arbitration against the approximately 1,200 putative class members with which Discover has valid, enforceable arbitration agreements.

II. STATUS OF DISCOVERY

Defendants' Production of Transaction Data. In early 2018, Plaintiffs requested that Defendants provide transaction data for the time period through and including September 30, 2017. After a lengthy meet and confer process, Visa, Mastercard, and Discover largely agreed to produce specific data as requested and AmEx agreed to supplement its prior production of the

transaction data for a sample of merchants and produce a series of monthly reports that reflect FLS chargebacks in an aggregate form. Mastercard and Discover completed their productions prior to the filing of the renewed motion for class certification. Visa and AmEx completed their productions later that month.

Additional Fact Discovery. Plaintiffs identified concerns and questions regarding AmEx's second privilege log for withheld documents and supplemental production of documents and have met and conferred with AmEx regarding these issues. AmEx produced additional documents on January 25, 2019. Upon further communications with counsel for AmEx, Plaintiffs have determined that no additional fact discovery will be necessary.

Third-Party Discovery. During the fact discovery period, Plaintiffs issued subpoenas to numerous third parties, including those that Plaintiffs believe have served as acquirers and/or processors with respect to merchant transactions identified in Defendants' production of transaction data. To date, Plaintiffs have received all anticipated third party data productions.

Respectfully submitted this 1st day of May, 2019, by:

ROBBINS ARROYO LLP

s/ George C. Aguilar

GEORGE C. AGUILAR
JENNY L. DIXON
ASHLEY R. RIFKIN
ERIC M. CARRINO
5040 Shoreham Place
San Diego, CA 92122
Telephone: (619) 525-3990
Facsimile: (619) 525-3991
gaguilar@robbinsarroyo.com
jdixon@robbinsarroyo.com
arifkin@robbinsarroyo.com
ecarrino@robbinsarroyo.com

CRAVATH, SWAINE & MOORE LLP

s/ Peter T. Barbur

PETER T. BARBUR
DAMARIS HERNÁNDEZ
825 Eighth Avenue
New York, NY 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700
pbarbur@cravath.com
dhernandez@cravath.com

Attorneys for Defendant American Express Company

**DEVINE GOODMAN RASCO &
WATTS-FITZGERALD, LLP**

JOHN W. DEVINE

ROBERT J. KUNTZ, JR.

2800 Ponce De Leon Blvd., Suite 1400
Coral Gables, FL 33134
Telephone: (305) 374-8200
Facsimile: (305) 374-8208
jdevine@devinegoodman.com
rkuntz@devinegoodman.com

**LAW OFFICES OF
THOMAS G. AMON**

THOMAS G. AMON

PETER B. PATTERSON, JR.
733 3rd Avenue, 15th Floor
New York, NY 10017
Telephone: (212) 810-2430
Facsimile: (212) 810-2427
tamom@amonlaw.com
ppatterson@amonlaw.com

Counsel for Plaintiffs B & R Supermarket, Inc. (d/b/a Milam's Market), Grove Liquors LLC, Strouk Group LLC (d/b/a Monsieur Marcel), and Palero Food Corp. and Cagueyes Food Corp. (d/b/a Fine Fare Supermarket)

**ARNOLD & PORTER
KAYE SCHOLER LLP**

s/ Robert J. Vizas

ROBERT J. VIZAS

SHARON D. MAYO

Three Embarcadero Center, Tenth Floor
San Francisco, CA 94111
Telephone: (415) 471-3100
Facsimile: (415) 471-3400

robert.vizas@arnoldporter.com
sharon.mayo@arnoldporter.com

**ARNOLD & PORTER
KAYE SCHOLER LLP**

MARK R. MERLEY

MATTHEW A. EISENSTEIN

KAREN C. OTTO

LAURA J. BUTTE

RON A. GHATAN

601 Massachusetts Avenue, NW
Washington, DC 20001

Telephone: (202) 942-5000

Facsimile: (202) 942-5999

mark.merley@arnoldporter.com

matthew.eisenstein@arnoldporter.com

karen.otto@arnoldporter.com

laura.butte@arnoldporter.com

ron.ghatan@arnoldporter.com

**ARNOLD & PORTER
KAYE SCHOLER LLP**

ROBERT C. MASON

250 West 55th Street

New York, NY 10019

Telephone: (212) 836-8000

robert.mason@arnoldporter.com

Attorneys for Defendants Visa Inc. and Visa U.S.A. Inc.

WINSTON & STRAWN LLP

s/ Jeffrey L. Kessler

JEFFREY L. KESSLER

EVA W. COLE

JOHANNA RAE HUDGENS
KELLI L. LANSKI
200 Park Avenue
New York, NY 10166
Telephone: (212) 294-6700
Facsimile: (212) 294-4700
jkessler@winston.com
ewcole@winston.com
jjudgens@winston.com
klanski@winston.com

WINSTON & STRAWN LLP
JAMES F. HERBISON
35 West Wacker Drive
Chicago, IL 60601
Telephone: (312) 558-5600
Facsimile: (312) 558-5700
jherbiso@winston.com

WINSTON & STRAWN LLP
SEAN D. MEENAN
JEANIFER E. PARSIGIAN
DANA L. COOK-MILLIGAN
101 California Street
San Francisco, CA 94111
Telephone: (415) 591-1000
Facsimile: (415) 591-1400
smeenan@winston.com
jparsigian@winston.com
dlcook@winston.com

Attorneys for Defendant Discover Financial Services

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

s/ Kenneth A. Gallo
KENNETH A. GALLO
CRAIG A. BENSON
MICHELLE K. PARikh
2001 K Street, NW
Washington, DC 20006-1047
Telephone: (202) 223-7300
Facsimile: (202) 223-7420

kgallo@paulweiss.com
cbenson@paulweiss.com
mparikh@paulweiss.com

*Attorneys for Defendant Mastercard
International Incorporated*

CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2019, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all registered parties and attorneys of record.

s/ George C. Aguilar
GEORGE C. AGUILAR

ROBBINS ARROYO LLP
5040 Shoreham Place
San Diego, CA 92122
Telephone: (619) 525-3990
Facsimile: (619) 525-3991
gaguilar@robbinsarroyo.com